

ORDER NO. 3793

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Alternative Delivery Provider 1 Contracts
Negotiated Service Agreement

Docket No. MC2017-82

Competitive Product Prices
Alternative Delivery Provider 1 Contracts (MC2017-82)
Negotiated Service Agreement

Docket No. CP2017-111

ORDER ADDING ALTERNATIVE DELIVERY PROVIDER 1 TO THE COMPETITIVE
PRODUCT LIST AND DESIGNATING BASELINE AGREEMENT

(Issued February 16, 2017)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Alternative Delivery Provider 1 (ADP 1) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Alternative Delivery Provider 1 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, January 30, 2017 (Request).

II. BACKGROUND

ADP 1 contracts offer customers international shipping using a combination of services provided by the Postal Service and an alternative delivery provider acting as the Postal Service's delivery agent. See Request at 3. Customers prepare shipments using the Postal Service's Global Shipping Software and present the shipment to the Postal Service for verification. *Id.* Customers then transport the shipment to the delivery agent who provides or arranges the remainder of the shipping services, including transportation, customs processing, and delivery, as well as handling any claims of loss. *Id.* at 3-4.

On January 30, 2017, the Postal Service filed the Request, supporting documents, and the negotiated service agreement (Agreement) it seeks to have designated as the baseline agreement for the ADP 1 product. The supporting documents include:

- A statement of supporting justification for adding ADP 1 to the competitive product list
- A copy of Governors' Decision No. 11-6
- Proposed revisions to the Mail Classification Schedule (MCS)
- A copy of the Agreement
- A certification of compliance with 39 U.S.C. § 3633(a)
- Financial workpapers

See *id.* Attachments 1-5. Also, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Request, Attachment 6.

The Postal Service requests that the Commission add the Agreement, together with any subsequent functionally equivalent ADP 1 contracts, as one product on the competitive product list within the MCS. Request at 2.

The Postal Service will notify the customer of the effective date of the Agreement. *Id.* at 4; *see also id.* Attachment 4 at 3. If the effective date is the first of the month, the Agreement will remain in effect for one calendar year from the effective date. Request, Attachment 4 at 3. If the effective date of the Agreement is not the first of the month, the Agreement will remain in effect until the last day of the month in which the effective date falls in the year subsequent to the effective date. *Id.*

On January 31, 2017, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.²

On February 8, 2017, Chairman's Information Request No. 1 was issued.³ The Postal Service filed a response on February 13, 2017.⁴ In CHIR No. 1, the Chairman sought further explanation on the scope and nature of the ADP 1 product. *See* CHIR No. 1. Questions pertained to the cost of services provided directly by the Postal Service, the disaggregated cost of services provided by the delivery agent, the characterization of the duties paid by the shipper, and the shipping rules described in a document incorporated by reference into the contract. *Id.* The Postal Service provided the requested explanations and filed the requested information under seal. Responses to CHIR No. 1.

III. COMMENTS

The Public Representative filed comments on February 7, 2017.⁵ No other interested person submitted comments. The Public Representative states that he reviewed the Agreement, statement of supporting justification, and financial data and

² Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, January 31, 2017.

³ Chairman's Information Request No. 1, February 8, 2017 (CHIR No. 1).

⁴ Responses of the United States Postal Service to Chairman's Information Request No. 1, with Portions Filed Under Seal, February 13, 2017 (Responses to CHIR No. 1).

⁵ Public Representative Comments on Postal Service Request to Add Alternative Delivery Provider 1 Contracts to the Competitive Product List, February 7, 2017 (PR Comments).

model filed under seal. PR Comments at 2. Based on that review, he concludes that ADP 1 should be categorized as a competitive product and added to the competitive product list. *Id.* He asserts that the Agreement should generate sufficient revenue to cover its attributable costs and meet the requirements of 39 U.S.C. § 3633(a). *Id.* at 2-3.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, supporting documents, financial analyses provided under seal, the Public Representative's comments, and the Postal Service's Responses to CHIR No. 1.

Product classification. The Commission's statutory responsibilities when evaluating the Request include assigning the ADP 1 product to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34(a). Before adding a product to the competitive product list, the Commission must consider three criteria. First, the Commission must find that the Postal Service does not "exercise[] sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. § 3642(b)(1); see 39 C.F.R. § 3032.32(d). Second, the Commission must ensure that the product is not covered by the postal monopoly. 39 U.S.C. § 3642(b)(2); 39 C.F.R. § 3020.32(e). Third, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f)-(h).

The Postal Service asserts that when negotiating ADP 1 contracts, its bargaining position is constrained by other shippers who provide similar services, which prevents the Postal Service from increasing prices or decreasing service. Request, Attachment 1 at 3. The Postal Service asserts it cannot raise prices substantially above costs or decrease quality or output without risking loss of business to large competitors that offer

international express and package delivery services. *Id.* It notes that the ADP product bears similarities to the Global Express Guaranteed (GXG) product, which has been classified as competitive. *Id.* It contends that small businesses will benefit because ADP 1 contracts will provide pricing incentives that reduce costs. *Id.* at 5.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. First, the ADP 1 contract competes in the market for international shipping services where other products, such as the similar GXG product, have been classified as competitive.⁶ Second, major competitors exist in the international shipping market, and their products are widely available to United States customers. Third, customers such as the contract partner will likely be interested in the ADP 1 product. Fourth, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the ADP 1 product is appropriately classified as competitive and adds it to the competitive product list.

Product list and MCS language. The Postal Service proposes adding a new section 2510.13 to the MCS to cover ADP Contracts product. See Request at 2; *id.* Attachment 3. The Commission approves these changes and revises the competitive product list and MCS accordingly.

Cost considerations. Because the Commission finds that ADP 1 is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, does not cause market dominant products to subsidize competitive products as a

⁶ The Commission notes that there are substantial functional differences between GXG and ADP, including that ADP is only available on a contract basis and that the Postal Service does not directly provide any transportation for shipments under ADP. Despite these differences, both GXG and ADP are international shipping services where the Postal Service contracts with a supplier to expand the range of services it can offer to its customers. Both products similarly compete against competitors' international shipping products, even though their functional differences mean that GXG and ADP may provide services to different market segments.

whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the Agreement exceeds its attributable costs, the Agreement is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the Agreement covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment 5. The Postal Service also filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its review of the record, the Commission finds that the rates should cover the Agreement's attributable costs. See 39 U.S.C. § 3633(a)(2). For this reason, the Commission concludes that the Agreement should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds that the Agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c).

The Commission will review the cost coverage of the Agreement, the ADP 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

In conclusion, a preliminary review of the Agreement indicates that it is consistent with section 3633(a).

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the ADP 1 product. Following current practice, in any future request to add a new negotiated service agreement to the ADP 1 product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the

negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2017-82. Consistent with current practice, the request should include a redacted copy of Governors' Decision 11-6.

Other considerations. The Agreement is intended to take effect upon notification of the customer by the Postal Service, after approval is granted by the Commission. Request at 4; see also *id.* Attachment 4 at 3. The Postal Service shall promptly notify the Commission of the Agreement's effective date.

If the effective date is the first of the month, the Agreement will remain in effect for one calendar year from the effective date. Request, Attachment 4 at 3. If the effective date of the Agreement is not the first of the month, the Agreement will remain in effect until the last day of the month in which the effective date falls in the year subsequent to the effective date. *Id.*

In conclusion, the Commission approves ADP 1 as a new product and designates the Agreement as the baseline agreement for the ADP 1 product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Alternative Delivery Provider 1 (MC2017-82 and CP2017-111) is added to the competitive product list as a new product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.
2. The Commission designates the Agreement as the baseline agreement for the ADP 1 product.

3. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
4. If the Agreement terminates before the scheduled expiration date, the Postal Service shall promptly notify the Commission in these dockets.
5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2017-82 and CP2017-111. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to Subpart A of Part 3020—Competitive Product List

Negotiated Service Agreements*

Outbound International*

Alternative Delivery Provider (ADP) Contracts

ADP 1

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products **2000 Competitive Product List**

Negotiated Service Agreements*

Outbound International

Alternative Delivery Provider (ADP) Contracts

ADP 1

2510 Outbound International

2510.2 Negotiated Service Agreement Groups

- Alternative Delivery Provider (ADP) Contracts (2510.13)

2510.13 Alternative Delivery Provider (ADP) Contracts

2510.13.1 Description

- Alternative Delivery Provider (ADP) Contracts allow customers to ship packages to specified destination countries using a combination of the Postal Service and Postal Service delivery agent(s).
- Preparation requirements are as specified in the shipper's ADP contract.
- Packages sent under ADP Contracts may not contain letters unless subject to an exception or suspension as set forth in 39 CFR Parts 310 and 320.
- To qualify for an ADP contract a shipper must be capable, on an annualized basis, of paying at least \$500,000.00 in international postage to the Postal Service.
- Individual negotiated agreements must comply with the requirements specified in 39 U.S.C. § 3633.

2510.13.2 Size and Weight Limitations

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>The surface area of the address side of the item must be large enough to completely contain the shipping label.</u>			<u>none</u>
<u>Maximum</u>	<u>46 inches</u>	<u>46 inches</u>	<u>35 inches</u>	<u>70 pounds</u>
	<u>108 inches in combined length and girth</u>			

2510.13.3 Minimum Volume or Revenue Requirements

Shippers must commit to tendering varying minimum volumes or postage on an annualized basis.

2510.13.4 Price Categories

The following price categories are available for the product specified in this section:

- Pricing may vary based on origin, weight, destination, and other factors.

2510.13.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- None

2510.13.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- ADP 1
Baseline Reference
Docket Nos. MC2017-82 and CP2017-111
PRC Order No. 3793, February 16, 2017
Included Agreements
CP2017-111, expires TBD